

***United States Court of Appeals
for the Second Circuit***

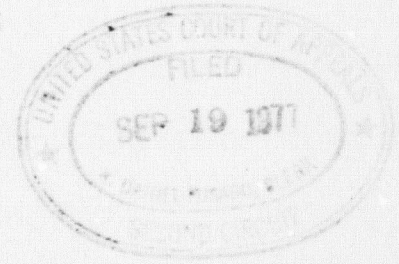


APPENDIX

NO. 77-6102

No. 77-6102

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



WALTER & MARIA GREEN,

Plaintiffs-Appellees,

and

PAT WALKER,

Plaintiff-Intervenor-Appellee,

v.

PAUL R. PHILBROOK, ET AL.,

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF VERMONT

JOINT APPENDIX

PAGINATION AS IN ORIGINAL COPY

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PLAINTIFFS

DEFENDANTS

GREEN, Walter and Maria; on behalf
of themselves and their minor child-
ren; on behalf of themselves and
other persons similarly situated
and Pat Walker, intervenor

vs.

PHILBROOK, Paul R., Commissione
of the Vermont Department of
Social Welfare; and David
Matthews, Secretary of the
Department of Health, Education
and Welfare

CAUSE

Pltf. claims refusal of State to make Social Welfare payments to them is in
violation of Federal Law ~~regarding~~ regulating same.

ATTORNEYS

Georgiana O. Miranda, Esq.

Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.
~~56 Railroad Street~~ 55 Main Street
St. Johnsbury, VT 05819

~~David Kalib, Esq.~~
Assistant Attorney General, State Of:
Montpelier, Vt. 05602 B:

U. S. Attorney
John R. Hughes, Jr., Esq., Asst. US A
P. O. Box 10
Rutland, VT 05701

1

CHECK HERE CASE WAS FILED IN RMA UPERIS	FILING FEES PAID			STATISTICAL CASES	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE PAID
	6/15/77	E 27241	5.00	358	5/1/77
				358	5/1/77

EDWARDS DISTRICT COURT DOCKET

75	NR.	PROCEEDINGS
20	1	Filed Motion to Proceed in Forma Pauperis and Affidavit in support.
"	2	" Order granting Motion to Proceed in Forma Pauperis.
"	3	" Verified Complaint, request for Class action.
"		Issued Summons.
28	4	Filed plaintiffs' memorandum in support of motion for TRO.
29	5	Filed Summons returned served.
29	6	Filed motion of Pat Walker to intervene as party plaintiff.
"	7	" memorandum in support of motion to intervene.
"	8	" Intervening Complaint.
29		In open Court before Judge Coffrin, hearing on request for TRO as to each plaintiff. Zander B. Rubin, Esq. for plaintiffs; David Kalib, Esq. and David Reed, Esq. for defendants.
"		Upon consideration of motion of Pat Walker to intervene as party plaintiff, no objection thereto, it is
"		Ordered: Motion granted.
"		The following witnesses, sworn by Clerk, were examined for plaintiffs: Patricia Walker and Walter Green.
"		Statements made to Court by Mr. Rubin and by Mr. Kalib.
"		Ordered: requests for TRO as to each plaintiff is denied.
10	9	Filed Deft. Paul Philbrook's answers to Plaintiff's complaint.
11	10	" Amended Complaints.
8	11	Filed Defendant Philbrook's Amended Answer.
18	12	Filed Notice of Deposition of the manager of the VT Dept. of Social Welfare's computer program.
24	13	Filed Federal Defendant's Motion to Dismiss, or Alternatively, for Summary Judgment.
"	14	" Memorandum of Points and Authorities in of Defendant Mathews' Motion to Dismiss, or, in the Alternative, for Summary Judgment.
30	15	" Pltfs' Interrogatories to Deft. Philbrook.
76		
12	16	" Pltf's Motion to Amend Complaint.
22	17	" Deft. State of Vt's agreement to allow pltf's Motion to Amend Complaint.
23	18	" Deft. Philbrook's amended answer to Pltfs' amended complaint.
26	19	Filed Stipulation re extension of time to respond to Deft.'s motions.
"		ORDERED: Motion granted. Plaintiffs shall have 60 additional days in which to respond to Defendant Mathews motion to Dismiss or alternatively for summary judgment.
3	20	Filed Deft. Philbrook's Answer to Interrogatories.
12	21	Filed, Pltfs. Interrogatories to defendant Philbrook.
9	22	Filed, Defendant's Answer to Interrogatories. (Philbrook)
15	23	Filed Pltfs' Motion for Summary Judgment on Statutory Claims.
"	24	" Pltfs' Memorandum opposing Deft. Mathews' Motion to Dismiss and Motion for Summary Judgment, and in support of Pltfs' Motion for Summary Judgment on Statutory Claims.
5	25	Filed Stipulation--that the Defendant's David Matthews time to answer or move and respond to plaintiff's cross-motion for summary judgment is extended until May 31, 1976.
6		Upon consideration of above Stipulation, it is
"		SO ORDERED. Attorneys notified.
10	26	Filed Defendants' memorandum in opposition to motion for Summary Judgment on statutory claims & in reply to memorandum opposing...

DOCKET CONTINUATION SHEET

FPI 11-14-75 50M-3511

PLAINTIFF

DEFENDANT

GREEN, Walter & Maria

PHILBROOK, Paul R

DOCKET NO. 75-23

PAGE 2 OF 2 PAGES

DATE	NR.	PROCEEDINGS
		... Defendants' Motion to dismiss, or alternatively for Summary Judgment.
Aug. 5	27	Filed Federal defendant's supplemental memorandum in support of his motion to dismiss, or alternatively, for summary judgment.
" 6	28	Filed supplemental memorandum on effect of Aldinger v. Howard.
Aug. 9		In open Court before Judge Coffrin, hearing on defendant Matthews' motion to dismiss or alternatively for summary judgment; and on plaintiffs' motion for summary judgment. Zander B. Rubin, Esq. for plaintiffs; Georgiana Miranda, Esq. for the State of Vt.; John Hughes, Esq. and Robert Jay, Esq. for Government.
" "		Statements made to Court by Mr. Jay and by Mr. Rubin.
" "		Decision reserved.
Sept 2	29	Filed Plaintiffs' supplemental memorandum in support of Mandamus Jurisdiction.
" 15	30	" Deposition of Clifton C. Cloud.
Sept 23	31	Filed Government's motion to extend time to respond to plaintiffs' supplemental memorandum in support of mandamus jurisdiction.
" 24		Upon consideration of motion for extension of time in which to respond to plaintiffs' supplemental memorandum in support of mandamus jurisdiction, it is,
" "		ORDERED: Motion granted. Time to file response to plaintiffs' supplemental memorandum is extended to 10-5-76. Mailed copy to attorneys.
Oct. 6	32.	Filed Government's motion for enlargement of time.
" "	33.	" Government's memorandum of points and authorities.
" "	34.	ORDERED: Upon consideration of defendant's motion for enlargement of time to October 8, 1976, in which to respond to plaintiffs' supplemental memorandum in support of mandamus jurisdiction. Mailed copy to attorneys.
13	35.	Filed Federal defendant's response to plaintiffs' supplemental memorandum in support of mandamus jurisdiction.
10	36	Filed Plaintiffs' supplemental memorandum in support of jurisdiction over the Federal Defendant.
11.24	37	Filed Opinion and Order--the individual plaintiffs' motion for summary judgment is hereby granted and, correspondingly, the federal defendant's motion to dismiss or, alternatively, for summary judgment is denied. Further, the parties to this litigation are hereby directed to submit to this Court, within 30 days of the date hereof, a judgment order upon which they agree and which is in accordance with this opinion. Should the parties be unable to agree as to the damages to which the plaintiffs Walter and Maria Green are entitled, the Court will schedule a hearing thereon upon request of counsel for the parties made within 30 days from the date hereof. It is so ORDERED. Mailed copy to attorneys. 3
Mar. 11	38	Filed Plaintiffs Motion for Class Certification.
" 11	39	Filed Memorandum in Support of Motion for Class Certification.

(over)

DC-111A REV. (1/75)

PLAINTIFF

DEFENDANT

alter and Maria Green, etc.

Paul R. Philbrook, et al

DOCKET NO. 75-23

PAGE ____ OF ____ PAGE.

DATE	NR.	PROCEEDINGS
<u>77</u>		
r.21		In Chambers before Judge Coffrin, hearing on plaintiff's motion for class action certification. Kenneth Appel, Esq. for plaintiffs; Georgiana Miranda, Esq. for the State; John Hughes, Esq. for the Government.
"		Ordered: Motion denied.
21	40.	Filed Judgment Order -- Certain sections of the Vt. Welfare Assistance Manual is declared invalid -- the Vt. Dept. of Social Welfare shall pay to plaintiffs Greens a sum equal to the total monthly benefits denied to them due to the termination of their ANFC benefits pursuant to the invalid regulations. SSN's which were divulged on behalf of plaintiff Walker's children pursuant to the invalid regulations shall be expunged from any and all records. Copy mailed to attorneys.
ne 15	41	Filed Notice of Appeal by Deft. Philbrook.
"	42	" Notice of Appeal by Deft. Mathews.
"		Mailed copy of Papers 41 & 42 to Judge Coffrin, Court Reporter (F.C. Mr. Fusaro; Attorneys of record: Zander B. Rubin, Esq., Georgiana O. Miranda, Esq., and George W. F. Cook, Esq. Mailed appeal forms to Ms. Miranda and Mr. Hughes.
17	43	Filed Pltfs' Notice of Appeal. Mailed copy to Judge Coffrin, Court Reporter (FC), Mr. Fusaro; Attorneys of Record: Zander B. Rubin, Esq., Georgiana O. Miranda, Esq. and George W. F. Cook, Esq. Mailed appeal forms to Zander B. Rubin, Esq.
y 14	44	Filed Notice of Pre-Argument Conf. sch. 8/12/77 at Burlington.
21		Mailed record on appeal to Clerk, U.S. Court of Appeals for the Second Circuit, NY, NY. Attorneys notified.

COPY

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Oct 23 4 03 PM '75
Clerk
C. M. J.
Deputy Clerk

WALTER and MARIA GREEN, on :
behalf of themselves and their :
minor children; on behalf of them- :
selves and other persons similarly :
situated, :

Plaintiffs : Civil Action

vs.

No. 76-22

PAUL R. PHILBROOK, Commissioner :
of the Vermont Department of :
Social Welfare :
and :

VERIFIED COMPLAINT

DAVID MATHEWS, Secretary of the :
Department of Health, Education :
and Welfare, :

CLASS ACTION

Defendants :

I. PRELIMINARY STATEMENT

1. This is a civil class action seeking declaratory and injunctive relief to declare certain regulations of the defendants invalid as violating plaintiffs' rights under applicable federal law or the federal constitution. Plaintiffs further seek to enjoin the challenged regulations and to prohibit the defendants from terminating plaintiffs' ANFC benefits pursuant to the challenged regulations. The challenged regulations require applicants or recipients of ANFC to obtain and supply to the defendant Social Security numbers for all family members, as a condition of eligibility for assistance.

II. JURISDICTION

2. This court has jurisdiction over defendant Philbrook pursuant to 28 U.S.C. 1343(3)(4) which provides jurisdiction in any case authorized by 42 U.S.C. 1983;

3. This court also has jurisdiction over defen-

dant Philbrook pursuant to 28 U.S.C. 1331, because the action arises under the Constitution and laws of the United States, and the amount in controversy exceeds \$10,000;

4. This court has jurisdiction over defendant Mathews pursuant to 28 U.S.C. 1331 because the action arises under the Constitution and laws of the United States, and the amount in controversy exceeds \$10,000.00;

5. This court has jurisdiction over defendant Mathews pursuant to 28 U.S.C. 1361 because plaintiffs request relief in the nature of mandamus against defendant Mathews;

6. This court has jurisdiction over defendant Mathews under the doctrine of pendent jurisdiction and pursuant to 28 U.S.C. §1343(3)(4).

III. PARTIES

7. Plaintiffs Walter and Maria Green are citizens of the United States and the state of Vermont and residents of Norton, Vermont. They have three (3) minor children on whose behalf they are suing as parents and guardians.

8. Defendant Philbrook is Commissioner of the Vermont Department of Social Welfare, and under 33 V.S.A. 2505, he is the individual charged with responsibility for administering the public assistance programs of the State of Vermont.

9. Defendant Mathews is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. 602(b), he is authorized to approve state plans for the ANFC program, and pursuant to 42 U.S.C. 1302 he is authorized to adopt rules and regulations not

inconsistent with the provision of the Social Security Act regarding ANFC programs.

IV. CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action pursuant to Rule 23(1), (2) of the F.R.C.P. on behalf of themselves and all other persons similarly situated. The class is composed of all present and future applicants for, or recipients of, ANFC in Vermont, who are subject to the defendant's regulations under challenge here, requiring them to obtain Social Security numbers for all family members and supply the same to the defendant as a condition of eligibility for assistance.

11. Plaintiffs do not know the precise number of persons in this class, as that information is within the defendant's knowledge, and the class is a fluid one, but, upon information and belief it is alleged that the size of the class is so numerous as to make joinder impractical.

12. There are questions of law and fact common to the plaintiffs and all other members of the class, i.e. whether the challenged regulations violate federal law or the federal Constitution.

13. The claims of the named plaintiffs are typical of the claims of the class, and thus the named plaintiffs will adequately protect the interests of the class.

14. Moreover, the defendants have acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

V. STATEMENT OF FACTS

15. Plaintiffs Walter and Maria Green have three (3)

minor children, ages 7, 5, and 1, and are presently receiving public assistance under the ANFC-UP (unemployed father) program from the Vermont Department of Social Welfare.

16. Public Law 93-647, 88 Stat. 2351 et seq. was adopted by the U. S. Congress, and contained various amendments and additions to the provisions of the Social Security Act pertaining to the ANFC program. The major portion of the new law dealt with the question of improving the collection of child support payments from the absent parents of ANFC recipients.

17. Public Law 93-647 contained an amendment to 42 U.S.C. 602(a), which added the following language:

"(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State Agency his social security account number (or numbers, if he has more than one such number), and (B) that such State Agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;"

18. Defendant Mathews, pursuant to 42 U.S.C. 1302, adopted the following regulation to implement the above-quoted statute:

"The State plan must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number.

(b) For new applicants, the requirements of paragraph (a) of this section shall be effective July 1, 1975; and, for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by §206.10(a)(9) of this chapter.

(c) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(d) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (a) of this section.

(e) The State or local agency will use such account numbers, in addition to any other means of identification already in use, in the administration of the plan.

(f) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

(g) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 402(a)(23) of the Social Security Act and that the SSN will be utilized in the administration of the AFDC program."

45 C.F.R. §232.10

19. Defendant Philbrook adopted the following regulation to implement the above-quoted statute and regulation:

"The Department will notify the applicant or recipient that the Social Security number will be utilized in the administration of the AFDC program. Refusal to furnish the Social Security numbers or refusal to apply for Social Security numbers for any applicant/recipient shall make the family ineligible for assistance."

WAM 2303

20. Under WAM 2303 the Department requires Social Security numbers for all family members, including children.

21. Plaintiffs Walter and Maria Green were notified by agents of the Vermont Department of Social Welfare that they must give their Social Security numbers to the department, and since their three (3) minor children did not have any numbers, that they must apply for them for the children and furnish them to the Department when they were obtained.

22. Plaintiffs Walter and Maria Green were willing to give their Social Security numbers to the Department.

but were unwilling to apply for Social Security numbers for their three (3) minor children, as they felt this to invade the children's right to privacy, and to inflict a stigma on the children and to subject the children to something that is not of their own choosing, which they might regret when they become of age.

23. Because of this refusal defendant Philbrook notified the Green's that their ANFC assistance would be terminated. The Green's received their check for October, but will not receive a check for November unless they comply with WAM 2303.

24. Plaintiffs Walter and Maria Green's sole source of income for themselves and their three (3) children is their monthly ANFC payment of \$320.00. They use this money to purchase their food, clothing, pay for their fuel, and pay for other necessities of life. If their ANFC is not paid for November and subsequent months, they will have no means of support or subsistence, and thus will suffer great and irreparable injury. They are without means to give bond in this action.

FIRST CAUSE OF ACTION
(STATUTORY CLAIM)

25. The Social Security Act, 42 U.S.C. 602 contains the eligibility requirements for all ANFC programs, and any additional eligibility requirements or contrary regulations are invalid. A state plan cannot impose additional eligibility requirements for ANFC, and the Secretary of HEW cannot adopt regulations inconsistent with the Social Security Act.

26. The regulations adopted by defendant Mathews (45 C.F.R. §232.10), and the regulation adopted by defendant Philbrook (WAM 2303) are inconsistent with and not authorized by the statute which they were meant to implement (42 U.S.C.

602(a)(25), and are thus invalid under the Supremacy Clause of the U. S. Constitution.

SECOND CAUSE OF ACTION
(CONSTITUTIONAL CLAIMS)

27. If the challenged regulations are found to be consistent with the Social Security Act, 42 U.S.C. 602(a)(25), then the regulations and the statute violate plaintiffs' fundamental constitutional right to privacy, and there is no compelling and countervailing interest to be protected.

28. If the challenged regulations are found to be consistent with the Social Security Act, 42 U.S.C. 602 (a)(25), then the regulations and the statute deny to plaintiffs the equal protection of the laws, as guaranteed by the U. S. Constitution.

WHEREFORE, plaintiffs pray that this Court:

1. Enter an order granting plaintiff's request that the action be treated as a class action;

2. Grant a temporary restraining order restraining defendant Philbrook, his agents, and employees from terminating plaintiffs' ANFC benefits pursuant to WAM 2303;

3. Have a single judge hear plaintiffs' statutory claims, and declare that 45 C.F.R. §232.10 and WAM §2303 are inconsistent with and not authorized by 42 U.S.C. 602 (a)(25), and are thus invalid under the Supremacy Clause of the U. S. Constitution, and preliminarily and permanently enjoin their enforcement;

4. Convene a three judge court, pursuant to 28 U.S.C. 2281, 2282, and 2284, to hear plaintiffs' constitutional claims if plaintiffs' statutory claims are not upheld, and declare that 45 C.F.R. §232.10, WAM 2303, and

42 U.S.C. 602(a)(1) violate plaintiffs' constitutional rights to privacy and to the equal protection of the laws as guaranteed by the U. S. Constitution, and preliminarily and permanently enjoin their enforcement;

5. Grant a writ in the nature of mandamus ordering defendant Mathews to approve the Vermont ANFC plan without requiring it to contain a provision based on 45 C.F.R. §232.10;

6. Award such other relief as may appear to the Court to be equitable, just and proper.

Dated: 4/8/75

Zander B. Rubin
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, VT 05819
Attorneys for Plaintiffs

VERIFICATION

I, Walter Green, having been duly sworn, hereby state that I have read the foregoing Complaint and that the allegations of fact pertaining to him are true of his own knowledge and belief.

Dated: 4/8/75

Walter Green

Subscribed and sworn to before me this 11 day
of April, 1975.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

WALTER and MARIA GREEN, on :
behalf of themselves and their :
minor children; on behalf of :
themselves and other persons :
similarly situated, :
Plaintiffs : Civil Action
PAT WALKER, :
Plaintiff-Intervenor : No. 75-232
v. : INTERVENING COMPLAINT
PAUL R. PHILBROOK, Commissioner :
of the Vermont Department of :
Social Welfare :
and :
DAVID MATHEWS, Secretary of the :
Department of Health, Education :
and Welfare, :
Defendants :

I. PRELIMINARY STATEMENT

1. This is a civil class action seeking declaratory and injunctive relief to declare certain regulations of the defendants invalid as violating plaintiffs' rights under applicable federal law or the federal constitution. Plaintiffs further seek to enjoin the challenged regulations and to prohibit the defendants from terminating plaintiffs' ANFC benefits pursuant to the challenged regulations. The challenged regulations require applicants or recipients of ANFC to obtain and supply to the defendant Social Security numbers for all family members, as a condition of eligibility for assistance.

II. JURISDICTION

2. This court has jurisdiction over defendant Philbrook pursuant to 28 U.S.C. 1343(3)(4) which provides jurisdiction in any case authorized by 42 U.S.C. 1983;
3. This court also has jurisdiction over defendant

Philbrook pursuant to 28 U.S.C. 1331, because the action arises under the Constitution and laws of the United States, and the amount in controversy exceeds \$10,000;

4. This court has jurisdiction over defendant Mathews pursuant to 28 U.S.C. 1331 because the action arises under the Constitution and laws of the United States, and the amount in controversy exceeds \$10,000.00;

5. This court has jurisdiction over defendant Mathews pursuant to 28 U.S.C. 1361 because plaintiffs request relief in the nature of mandamus against defendant Mathews;

6. This court has jurisdiction over defendant Mathews under the doctrine of pendent jurisdiction and pursuant to 28 U.S.C. §1345(3)(4).

III. PARTIES

7. Plaintiff Pat Walker is a citizen of the United States and a resident of the State of Vermont. She is divorced and has the custody of five (5) minor children on whose behalf she is suing as parent and guardian.

8. Defendant Philbrook is Commissioner of the Vermont Department of Social Welfare, and under 33 V.S.A. 2505, he is the individual charged with responsibility for administering the public assistance programs of the State of Vermont.

9. Defendant Mathews is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. 602(b), he is authorized to approve state plans for the ANFC programs, and pursuant to 42 U.S.C. 1302 he is authorized to adopt rules and regulations not inconsistent with the provision of the Social Security Act regarding ANFC programs.

IV. CLASS ACTION ALLEGATIONS

10. Plaintiffs bring this action pursuant to Rule 23(b)(2) of the F.R.C.P. on behalf of, themselves and all other persons similarly situated. The class is composed of all present and future applicants for, or recipients of, ANFC in Vermont, who are subject to the defendant's regulations under challenge here, requiring them to obtain Social Security numbers for all family members and supply the same to the defendant as a condition of eligibility for assistance.

11. Plaintiffs do not know the precise number of persons in this class, as that information is within the defendant's knowledge, and the class is a fluid one, but, upon information and belief it is alleged that the size of the class is so numerous as to make joinder impractical.

12. There are questions of law and fact common to the plaintiffs and all other members of the class, i.e. whether the challenged regulations violate federal law or the federal Constitution.

13. The claims of the named plaintiffs are typical of the claims of the class, and thus the named plaintiffs will adequately protect the interests of the class.

14. Moreover, the defendants have acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

V. STATEMENT OF FACTS

15. Plaintiff Pat Walker has five (5) minor children, aged 13, 11, 9, 7, and 5, and is presently receiving public

assistance under the ANFC program from the Vermont Department of Social Welfare.

16. Public Law 93-647-88 Stat. 2351 et seq. was adopted by the U. S. Congress, and contained various amendments and additions to the provisions of the Social Security Act pertaining to the ANFC program. The major portion of the new law dealt with the question of improving the collection of child support payments from the absent parents of ANFC recipients.

17. Public Law 93-647 contained an amendment to 42 U.S.C. 602(a), which added the following language:

"(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State Agency his social security account number (or numbers, if he has more than one such number), and (B) that such State Agency shall utilize other means of identification it may determine to employ in the administration of such plan;"

18. Defendant Mathews, pursuant to 42 U.S.C. 1302, adopted the following regulation to implement the above-quoted statute:

"The State plan must provide that:
(a) As a condition of eligibility, each applicant for or recipient of aid will be required:
1) To furnish to the State or local agency social security account number, hereinafter referred to as the SSN (or numbers, if more than one has been issued); and
(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number.
(b) For new applicants, the requirements of paragraph (a) of this section shall be effective July 1, 1975; and, for current recipients, it shall be effective as determined by the State agency but not later than the time of the next redetermination of eligibility required by §206.10(a)(9) of this chapter.

(c) The State or local agency will assist the applicant or recipient in making applications for SSNs and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of social security account numbers.

(d) The State or local agency will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirement of paragraph (a) of this section.

(e) The State or local agency will use such account numbers, in addition to any other means of identification already in use, in the administration of the plan.

(f) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

(g) The State or local agency shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance required by section 402(a)(25) of the Social Security Act and that the SSN will be utilized in the administration of the AFDC program."

45 C.F.R. §232.10

19. Defendant Philbrook adopted the following regulation to implement the above-quoted statute and regulation:

"The Department will notify the applicant or recipient that the Social Security number will be utilized in the administration of the ANFC program. Refusal to furnish the Social Security numbers or refusal to apply for Social Security numbers for any applicant/recipient shall make the family ineligible for assistance."

WAM 2303

20. Under WAM 2303 the Department requires Social Security numbers for all family members, including children.

21. Plaintiff Pat Walker was notified by agents of the Vermont Department of Social Welfare that she must give her social security number and the children's social security numbers to the Department.

22. Plaintiff Pat Walker was willing to give her social security number to the Department, but was unwilling to give her children's social security numbers, as she felt this to be a decision the children should make when they become of age, and that it would stigmatize the children and allow them to be tracked, and would otherwise invade their right to privacy.

23. Because of this refusal defendant Philbrook notified plaintiff Walker that her ANFC assistance would be terminated. She received her check for October, but will not receive a check for November unless she complies with WAM 2303.

24. Plaintiff Walker's sole source of income for herself and her five (5) children is her monthly ANFC payment of \$439.00. She had a part-time job paying her an additional \$75.00 per month, but this position has ended and she has no source of income for November other than her ANFC check. She uses this money to purchase food, clothing, and pay for shelter costs, and other necessities for life. If her ANFC is not paid for November and subsequent months, she will have no means of support or subsistence, and thus will suffer great and irreparable injury. She is without means to give bond in this action.

FIRST CAUSE OF ACTION
(STATUTORY CLAIM)

25. The Social Security Act, 42 U.S.C. 602 contains the eligibility requirements for all ANFC programs, and any additional eligibility requirements or contrary regulations are invalid. A state plan cannot impose additional eligibility requirements for ANFC, and the Secretary of Hew cannot adopt regulations inconsistent with the Social Security Act.

26. The regulations adopted by defendant Mathews (45 C.F.R. §232.10), and the regulation adopted by defendant Philbrook (WAM 2303) are inconsistent with and not authorized by the statute which they were meant to implement (42 U.S.C. 602(a) (25), and are thus invalid under the Supremacy Clause of the U. S. Constitution.

SECOND CAUSE OF ACTION
(CONSTITUTIONAL CLAIMS)

27. If the challenged regulations are found to be consistent with the Social Security Act, 42 U.S.C. 602(a) (25), then the regulations and the statute violate plaintiffs' fundamental constitutional right to privacy, and there is no compelling and countervailing interest to be protected.

28. If the challenged regulations are found to be consistent with the Social Security Act, 42 U.S.C. 602(a) (25), then the regulations and the statute deny to plaintiffs the equal protection of the laws, as guaranteed by the U.S. Constitution.

WHEREFORE, plaintiffs pray that this Court:

1. Enter an order granting plaintiff's request that the action be treated as a class action;
2. Grant a temporary restraining order restraining defendant Philbrook, his agents, and employees from terminating plaintiffs' ANFC benefits pursuant to WAM 2303;
3. Have a single judge hear plaintiffs' statutory claims, and declare that 45 C.F.R. §232.10 and WAM 2303 are inconsistent with and not authorized by 42 U.S.C. 602 (a) (25), and are thus invalid under the Supremacy Clause of the U. S. Constitution, and preliminarily and permanently enjoin their enforcement;

4. Convene a three judge court, pursuant to 28 U.C.C. 2281, 2282, and 2284, to hear plaintiffs' constitutional claims if plaintiffs' statutory claims are not upheld, and declare that 45 C.F.R. §232.10, WAM 2303, and 42 U.S.C. 602 (a) (25) violate plaintiffs' constitutional rights to privacy and to the equal protection of the laws as guaranteed by the U. S. Constitution, and preliminarily and permanently enjoin their enforcement;

5. Grant a writ in the nature of mandamus ordering defendant Mathews to approve the Vermont ANFC plan without requiring it to contain a provision based on 45 C.F.R. §232.10;

6. Award such other relief as may appear to the Court to be equitable, just and proper.

Dated: _____

Zander B. Rubin
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, VT 05819
Attorneys for Plaintiffs

VERIFICATION

I, Pat Walker, having been duly sworn, hereby state that I have read the foregoing Complaint and that the allegations of fact pertaining to her are true of her own knowledge and belief.

Dated: _____

Pat Walker

Subscribed and sworn to before me this _____ day
of _____, 1975.

Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

WALTER and MARIA GREEN, on
behalf of themselves and their
minor children; on behalf of them-
selves and other persons similarly
situated,

Plaintiffs

v.

PAUL R. PHILBROOK, Commissioner
of the Vermont Department of
Social Welfare

and

DAVID MATHEWS, Secretary of the
Department of Health, Education
and Welfare,

Defendants

Civil Action

No.

ANSWER

Now comes David L. Kalib, attorney for Paul Philbrook,
defendant herein, and answers plaintiffs' complaint as follows:

1. The allegations of paragraphs 7, 8, 9, 16, 17, 18,
19, 20, 21, 23, and 25 of the Complaint are admitted.

2. The allegations of paragraphs 2, 3, 10, 11, 12, 13,
14, 26, 27, and 28 of the Complaint are denied.

3. The defendants lack knowledge or information suffi-
cient to form a belief as to the allegations of paragraph 24.

4. With respect to the allegations of paragraph 1 of the
complaint, defendant denies that this action is sustainable as a
class action; and further denies any of its actions have violated
plaintiffs' rights under federal law of the federal constitution.
With respect to the remainder of paragraph 1, plaintiffs state
conclusions of law, to which no answer is required. However,
insofar as an answer is desirable, defendants deny each and every
allegation.

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05602

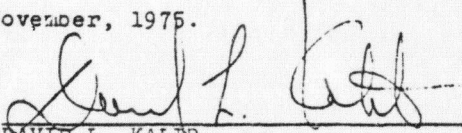
5. Defendant Philbrook does not believe he is required to answer paragraphs 4, 5, and 6, and accordingly does not.

6. With respect to paragraph 15, plaintiffs are no longer recipients of public assistance under Vermont's ANFC-UF program, but were when the complaint was initiated.

7. With respect to paragraph 22, defendants admit that plaintiffs Walter and Marie Green were willing to give the Department their Social Security numbers and admit that they refused to get numbers for their children, however, with respect to the rest of plaintiffs' allegations, an answer is not required because conclusions of law and not facts are set forth. To the extent an answer is required, defendants deny each and every remaining allegation.

Wherefore, the defendants respectfully request that the Court dismiss the Complaint.

Dated at Montpelier in the County of Washington, State of Vermont, this 7th day of November, 1975.


DAVID L. KALTS
Assistant Attorney General
Office of Attorney General
State Office Building
Montpelier, Vermont 05602
Attorney for Defendant Philbrook

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05602

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

WALTER and MARIA GREEN, on :
behalf of themselves and their :
minor children; on behalf of :
themselves and other persons : Civil Action
similarly situated, :
Plaintiffs : No. 75-232
PAT WALKER, :
Plaintiff - Intervenor : AMENDED COMPLAINTS
v. :
PAUL R. PHILBROOK, Commissioner :
of the Vermont Department of :
Social Welfare :
and :
DAVID MATHEWS, Secretary of the :
Department of Health, Education :
and Welfare, :
Defendants :

Now Come plaintiffs Walter Green and Pat Walker,
pursuant to Rule 15(a) F.R.C.P. to Amend their Complaints
as a matter of course, as follows:

WALTER GREEN:

Walter Green amends his complaint by adding the
following paragraph:

24a. After his request for a temporary restrain-
ing order was denied, plaintiffs Walter and Maria Green
still refused to apply for Social Security Numbers for
their children, and their ANFC benefits were discontinued
as of November 1, 1975, pursuant to W.A.M. 2303 and 45
C.F.R. §232.10.

Walter Green amends his prayer for relief by add-
ing the following:

7. Award him damages from defendant Mathews for
all months that his ANFC benefits were terminated pur-
suant to 45 C.F.R. §232.10, said damages to equal the

total of his monthly benefits that were denied to him.

Re. PAT WALKER:

Pat Walker amends her complaint by adding the following paragraph:

24a. After her request for a temporary restraining order was denied, plaintiff Pat Walker, being unable to subsist without her AFDC benefits, gave to the Vermont Department of Social Welfare her children's Social Security Numbers. She did this under protest and solely because she had no other alternative.

Pat Walker amends her complaint by adding the following:

7. Order that any records, computer tapes, or other documents, written, typed or otherwise recorded, of the Vermont Department of Social Welfare that have her children's Social Security Numbers be deleted of said Social Security numbers, and that said numbers be expunged from all such records of the Department as if said numbers had never been revealed to the Department.

8. Order that any records, computer tapes or other documents, written, typed or otherwise recorded, of the Department of Health, Education and Welfare that have her children's Social Security numbers as a result of her divulging said numbers to the Vermont Department of Social Welfare, be expunged as provided in paragraph 7.

Dated at St. Johnsbury, Vermont this 7 day of November, 1975.

Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Zander B. Rubin, hereby certify that I served a copy of the foregoing Amended Complaints on the following by mailing a copy thereof, first class mail, proper postage affixed to the following addresses:

David Kalib, Esq.
Assistant Attorney General
Department of Social Welfare
Montpelier, VT 05602

Jerome F. O'Neill, Esq.
Assistant U. S. Attorney
Rutland, VT 05701

Dated: 4/18

Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.

UNITED STATES DISTRICT COURT.

DISTRICT OF VERMONT

WALTER and MARIA GREEN, ON	)	
behalf of themselves and their	)	
minor children; on behalf of	)	
themselves and other persons	)	
similarly situated,	)	CIVIL ACTION
	)	
Plaintiffs	)	No. 75-232
	)	
PAT WALKER,	)	
Plaintiff-Intereenor	)	AMENDED ANSWER
	)	
v.	)	
	)	
PAUL R. PHILBROOK, Commissioner	)	
of the Vermont Department of	)	
Social Welfare	)	
and	)	
DAVID MATHEWS, Secretary of the	)	
Department of Health, Education	)	
and Welfare,	)	
Defendants	)	

Now comes Defendant Paul R. Philbrook pursuant to F.R.C.P. 15
(a) to amend his answer in response to plaintiffs amended
complaint:

1. With respect to Walter Green:

(a) With respect to Paragraph

24a, Defendant believes that Plaintiff Green's benefits
have been discontinued, and has not reapplied.

(b) Defendant Philbrook is not affected by paragraph 7, and as
such is not required to respond.

2. With respect to Pat Walker:

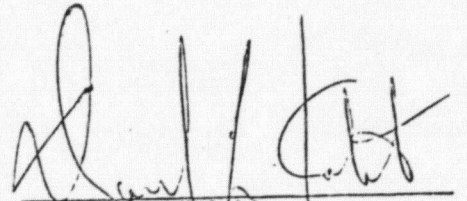
(a) With respect to paragraph 24 (a)

Defendant Philbrook admits the facts stated.

(b) With respect to Paragraphs 7 & 8 of the amended Complaint,
Defendant Philbrook is not requested to answer since no
allegation of fact is made, however, to the extent an answer
is required, defendant Philbrook would obviously comply with
any court order.

Dated at Montpelier, Vermont this 4 day of December,
1975.

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05602



David L. Kelib
Assistant Attorney General
Office of attorney General
State Office Building
Montpelier, Vt. 05602

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05602

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

WALTER AND MARIA GREEN, ON
behalf of themselves and
their minor children; on
behalf of themselves and
others similarly situated,

Plaintiffs,

PAT WALKER, Plaintiff-Intervenor,

vs.

PAUL R. PHILBROOK, Commissioner
of the Vermont Department
of Social Welfare
and

DAVID MATHEWS, Secretary
of the Department of Health,
Education, and Welfare,

Defendants.

Civil Action
No. 75-232

FEDERAL DEFENDANT'S MOTION TO DISMISS,
OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT.

David Mathews, Secretary of Health, Education, and Welfare, the Federal Defendant herein, hereby moves the Court pursuant to Rules 12(b)(1) and 12(b)(6), of the Federal Rules of Civil Procedure to dismiss the complaint herein; or, alternatively, to grant summary judgment in favor of the Federal defendant, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure. The grounds for these alternative Motions are set forth more fully in the attached Memorandum of Points and Authorities.

Respectfully submitted,

Dated: December _____, 1975

OF COUNSEL:

St. John Barrett
Acting General Counsel

Robert P. Jaye
Acting Assistant General Counsel

Department of Health, Education, and Welfare

137-18-55

files

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

WALTER and MARIA GREEN, on :
behalf of themselves and their :
minor children; on behalf of :
themselves and other persons :
similarly situated, : Civil Action No. 75-232
Plaintiffs :
PAT WALKER, :
Plaintiff-Intervenor : MOTION TO AMEND COMPLAINT
v. :
PAUL R. PHILBROOK, Commissioner :
of the Vermont Department of :
Social Welfare :
and :
DAVID MATHEWS, Secretary of the :
Department of Health, Education :
and Welfare, :
Defendants :

Now come the plaintiffs, by their attorneys, Zander
B. Rubin, Vermont Legal Aid, Inc., to move this Court to
allow them to amend their complaint to add an additional
statutory claim as follows:

Paragraph 26(a) should be added to read as follows:

26a. The Federal Privacy Act of 1974, 5 U.S.C. §552(a)
provides as follows:

"(a) (1). It shall be unlawful for any Federal, State
or local government agency to deny to any individual any right,
benefit, or privilege provided by law because of such individ-
ual's refusal to disclose his social security account number.

(2). The provisions of paragraph (1) of this
subsection shall not apply with respect to -

(A) any disclosure which is required
by Federal statute, or

(B) the disclosure of a social security
number to any Federal, State, or local agency maintaining a

system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual."

Since the Social Security Act doesn't explicitly authorize the state and federal regulations under challenge here, the denial of benefits for failure to supply the children's Social Security numbers violates the Privacy Act.

Paragraph 3(a) of the Prayer for Relief should be added to read as follows:

"3a. Have a single judge hear plaintiffs' statutory claims, and declare that 45 CFR §232.10 and WAM 2303 violate the Federal Privacy Act, 5 U.S.C. §552(a), and are thus invalid, and preliminarily and permanently enjoin their enforcement.

Dated at St. Johnsbury, Vermont, this 4 day of January, 1976.

Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Zander B. Rubin, hereby certify that I served a copy of the foregoing Motion on the following by forwarding a copy thereof, first class mail, proper postage affixed to the following addresses:

David Kalib, Esq.
Assistant Attorney General
Department of Social Welfare
Montpelier, VT 05602

John Hughes, Esq.
Assistant U. S. Attorney
Rutland, VT 05701

Dated: 1/6/76

Zander B. Rubin, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

WALTER and MARIA GREEN, on
behalf of themselves and
their minor children; on
behalf of themselves and
others similarly situated,
Plaintiffs

PAT WALKER, Plaintiff-Intervenor, : Civil Action
: No. 75-232

vs.

PAUL R. PHILBROOK, Commissioner
of the Vermont Department
of Social Welfare

and
DAVID MATHEWS, Secretary
of the Department of Health,
Education and Welfare,
Defendants

MOTION FOR SUMMARY JUDGMENT
ON STATUTORY CLAIMS

Now come the plaintiffs, by their attorneys, Zander B. Rubin, Vermont Legal Aid, Inc., pursuant to Rule 56(b) F.R.C.P. and moves this Court to grant summary judgment on their statutory claims, on the ground that there are no disputed facts and plaintiffs are entitled to judgment as a matter of law. Plaintiffs submit with this Motion a Memorandum in support thereof.

Dated at St. Johnsbury, Vermont, this 14th day of April, 1976.

Zander B. Rubin
Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs

APR 15 1976

COPY

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

FEB 21 3 47 PM '77
CLERK
U.S. DISTRICT COURT

Walter and Maria Green, on :
behalf of themselves and their :
minor children; on behalf of :
themselves and others similarly :
situated, and : Civil Action
Pat Walker, Plaintiff-Intervenor : File No. 75-232
v. :
Paul R. Philbrook, Commissioner :
of the Vermont Department of :
Social Welfare and David Mathews, :
Secretary of the Department of :
Health, Education and Welfare :

OPINION AND ORDER

This case presents a challenge to state and federal welfare regulations which require indigent children and their parents or guardians to obtain Social Security Account Numbers ("SSN's") and furnish them to the government as a condition of eligibility for family welfare assistance. The regulations are said to conflict with provisions of the Social Security Act of 1935, as amended, and the Privacy Act of 1974, and to violate the plaintiffs' constitutional rights to privacy and equal protection. The comparatively simple factual situation underlying the case is not in dispute.

Plaintiffs Walter and Maria Green live in Norton, Vermont, with their three minor children, on whose behalf they bring this suit. At the time the complaint was filed in October, 1975, the Greens were recipients of assistance from the Vermont Department of Social Welfare under the federal-state program of Aid to Needy Families with Children--^{1/} Unemployed Fathers ("ANFC"). They were notified by agents

of defendant Philbrook, the Commissioner of the Vermont Department of Social Welfare, that they would be required to supply SSN's for themselves and their three children as a condition of continued assistance in November, 1975. Since the children did not possess SSN's at the time, the Greens were required to apply for numbers and then supply them to the State. The adult plaintiffs were willing to furnish the Department with their numbers, but were unwilling to obtain or furnish SSN's for the children. They believed that to supply the Government with SSN's for their children would "invade the children's right to privacy, . . . inflict a stigma on [them] and . . . subject [them] to something that is not of their own choosing, which they might regret when they become of age." This suit was commenced to enjoin the termination of their welfare benefits, to invalidate the regulations that require the reporting of the children's SSN's, and to recover damages equal to the total monthly benefits denied them due to the termination of ANFC benefits pursuant to the challenged regulations.

Plaintiff-intervenor Pat Walker was placed in the same position as the Greens by the regulations in question. She was notified by the Vermont Department of Social Welfare that ANFC benefits for herself and her five minor children would be terminated in November, 1975, unless the SSN's of each family member were supplied to the Department by that time. Like the Greens, Mrs. Walker was willing to furnish her own SSN, but not those of her children. She alleges that she "felt this [furnishing the SSN's] to be a decision the children should make when they become of age, and that it

would stigmatize the children and allow them to be tracked, and would 'otherwise invade their right to privacy."

Requests by the plaintiffs and the intervening plaintiff for a temporary restraining order enjoining the termination of their benefits were denied by this Court following a hearing on October 29, 1975. Since the denial of the temporary restraining order, the Greens, electing to stand by their original position, have refused to apply for SSNs for their children. They have been terminated as recipients of ANFC. Mrs. Walker, however, has furnished her children's numbers to the Department in order to continue her assistance payments, but has done so, according to the allegations in her amended complaint, "under protest and solely because she had no other alternative." She has also amended the complaint to include requests that all government records of her children's SSNs be destroyed if she succeeds on the merits of this suit.

The case now is before the Court on cross-motions for summary judgment filed by the plaintiffs, who have sought class certification, and by defendant Mathews. Plaintiffs restrict their motion to the statutory claims, since they believe that additional facts are necessary to decide the constitutional claims. Plaintiffs do, however, urge that their constitutional claims are "not insubstantial" and that, therefore, they should be heard by a three-judge court if necessary.^{2/} Defendant Philbrook has not moved to join or to oppose the summary judgment motions. As none of the material facts summarized above are disputed, the case is ready for a determination of the statutory claims under Rule 56 of the Federal Rules of Civil Procedure. Defendant Mathews, in

addition, has moved to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Before turning to the substantive issues raised by the cross-motions for summary judgment, the Court will touch upon defendant Mathews' motion to dismiss on jurisdictional grounds, and the issue of class certification.

At the outset of this litigation jurisdiction over the federal defendant was a matter both strenuously contested and difficult of resolution. However, effective October 21, 1976, Congress amended federal question jurisdiction, 28 U.S.C. § 1331(a), by deleting the \$10,000 amount in controversy requirement where the action is brought against the United States, its agencies, or any officer or employee thereof acting in his official capacity. Pub. L. No. 94-574, § 2 (Oct. 21, 1976). The amendment is remedial in nature, see H.R. Rep. No. 1656, 94th Cong., 2d Sess. (1976), and it is intended to fill what has been termed "an unfortunate gap in the statutory jurisdiction of the federal courts," Wolff v. Selective Service Local Board No. 16, 372 F.2d 817, 826 (2d Cir. 1967). Thus, we think it proper to apply the amendment retroactively to grant jurisdiction over the defendant Secretary of Health, Education and Welfare even if there was no jurisdiction initially. Larkin v. Saffarans, 15 F. 147 (C.C.W.D. Tenn. 1883). In any event, were we to dismiss against the federal defendant now, the plaintiffs would be able to renew their action by refiling under the amended statute. The Court can envision no logical reason to require such a Sisyphean process. Jurisdiction over the state defendant is properly predicated upon 28 U.S.C. § 1343.

Another preliminary matter before the Court is the possible certification of a plaintiff class. The Court notes that neither party has moved for either the grant or denial of class certification under Fed. R. Civ. P. 23(c)(1). More particularly the plaintiffs have not moved for such a determination, as is required by Local Rule of Civil Procedure No. 11(3). In this regard, the Court is of the opinion that this issue cannot adequately be decided on the basis of the class action allegations in the complaints, the state defendant's general denials and the one page of the federal defendant's memorandum in contravention of the class action allegations. We, therefore, disregard the class action allegations and proceed to the merits. See Yulio v. Moore-McCormack Lines, Inc., 387 F. Supp. 872, 877 (S.D.N.Y. 1975), Glodgett v. Betit, 368 F. Supp. 211, 213-14 (D. Vt. 1973), aff'd, 421 U.S. 707 (1975).

Vermont's ANFC program is a State welfare program benefiting from federal financial participation under Title IV-A of the Social Security Act of 1935, 42 U.S.C. §§ 601-09, which is entitled Aid to Families with Dependent Children ("AFDC"). In order to qualify for the receipt of federal funds the ANFC program must meet all requirements set forth in 42 U.S.C. § 602(a) and implementing federal regulations and policies. 42 U.S.C. §§ 602(b), 603; 45 C.F.R. §§ 201.2, .3. The regulations challenged in this action implement § 402(a)(25) of the Social Security Act, 42 U.S.C. § 602(a)(25), which was added to the Social Security Act by the Social Services Amendments of 1974. Pub. L. No. 93-647, § 101(c)(5)(C), 88 Stat. 2337. 42 U.S.C. § 602(a)(25) reads as follows:

(a) A State plan for aid and services to needy families with children must . . . (25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan.

The provision was apparently designed to serve "[a]s an additional tool in pursuing missing parents and to simplify the administration of the AFDC and Child Support Programs." S. Rep. No. 1356, 93d Cong. 2d Sess., 4 [1974] U.S.C. Cong. & Admin. News 8152. The Child Support Program, also added by the 1974 Social Services Amendments, was designed to provide more effective methods of locating absent parents, establishing paternity and obtaining child support. 42 U.S.C. § 651.

The regulations promulgated by HEW to implement the statutory additions to 42 U.S.C. § 602(a) are contained principally in Part 232 of Title 45 of the Code of Federal Regulations. They became effective July 1, 1975. The focus of the dispute in this case is 45 C.F.R. § 232.10, which provides in pertinent part as follows:

The State plan must provide that:

(a) As a condition of eligibility, each applicant for or recipient of aid will be required:

(1) To furnish to the State or local agency a social security account number, hereinafter referred to as an SSN (or numbers, if more than one has been issued); and

(2) If he cannot furnish an SSN (either because such SSN has not been issued or is not known), to apply for such number through procedures adopted by the State or local agency with the Social Security Administration. If such procedures are not in effect, the applicant or

recipient shall apply directly for such number, submit verification of such application, and provide the number upon its receipt.

* * *

(e) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the plan.

(f) "Applicant" and "recipient" include the caretaker relative, the children, and any other individual whose needs are considered in determining the amount of assistance.

This requirement, because it was promulgated as a regulation under the authority of one of the criteria contained in 42 U.S.C. § 602(a), must be met in order for the Vermont Department of Social Welfare to obtain HEW approval of its ANFC program and the consequent grant of federal funds. 42 U.S.C. §§ 602(b), 603; 45 C.F.R. §§ 201.2, -.3; King v. Smith, 392 U.S. 309, 317 (1968). Accordingly, in view of 45 C.F.R. § 232.10, the following provision was added to the ANFC eligibility requirements contained in the Department's Welfare Assistance Manual, effective August 1, 1975:

Obtaining Social Security Numbers

The department will notify the applicant or recipient that the Social Security number will be utilized in the administration of the ANFC program.

Refusal to furnish the Social Security numbers or refusal to apply for Social Security numbers for any applicant/recipient shall make the family ineligible for assistance.

The department will assist applicants to apply for Social Security numbers and will not delay, deny or discontinue assistance during the issuance and verification of such numbers.

Vermont Department of Social Welfare, Bulletin No. 75-99, § 2303.

The plaintiffs contend that the federal and state regulations are not consistent with the provisions of

42 U.S.C. § 602(a)(25), upon which they are based, since the regulations require ANFC-benefitted children, as well as the caretaker relatives, to apply for and furnish SSNs. They also claim that enforcement of the regulations violates § 7 of the Privacy Act of 1974, 5 U.S.C. § 522a Note, which makes it unlawful for government agencies to withhold benefits because of an individual's refusal to disclose his SSN, unless the disclosure is required by federal statute. The plaintiffs contend alternatively that if the regulations are not in conflict with the federal statutes, they must fall under the Constitution.

We first consider the statutory argument that the regulations in question are inconsistent with the grant of authority contained in 42 U.S.C. § 602(a)(25). It is settled law that the Secretary's regulations are entitled to great deference by the courts. See, e.g., Youakim v. Miller, 44 U.S.L.W. 4467, 4468 (U.S. March 31, 1976); Department of Social Services v. Dublino, 413 U.S. 405, 421 (1973); Lewis v. Martin, 397 U.S. 552, 559 (1970). Furthermore, the regulations must be upheld unless they are "inconsistent" with the statute. 42 U.S.C. § 1302.^{3/}

The determination whether the regulations are inconsistent with the statute depends entirely upon the Court's construction of the words "applicants for or recipients of aid," as used in 42 U.S.C. § 602(a)(25). If we determine that Congress intended those words to include only "caretaker relatives" who apply for or receive AFDC on behalf of "dependent children," and not the children themselves, then HEW's interpretation of the statute in 45 C.F.R. § 232.10 would be inconsistent, and therefore

invalid, as not authorized by 42 U.S.C. § 1302. Commonly accepted tenets of statutory construction lead to the conclusion that dependent children are not "applicants for or recipients of aid," as those terms are used in 42 U.S.C. § 602(a)(25), and that, therefore, 45 C.F.R. § 232.10 is inconsistent with § 602(a)(25). Although the focus of this discussion is on 45 C.F.R. § 232.10, it is clear that if that regulation should fall as being inconsistent with the statute, the state regulation to the same effect must fall to the extent that it applies to children benefitted by ANFC.

The same subsection of the Social Services Amendments of 1974 which added 42 U.S.C. § 602(a)(25) also added 42 U.S.C. § 602(a)(26). In pertinent part the latter reads:

(26) . . . each applicant or recipient will be required--

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for and receiving aid

(B) To cooperate with the State . . . (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child

In 42 U.S.C. § 602(a)(26), Congress used the terms "applicant" and "recipient" in a manner which distinguishes caretaker relatives--the individuals who "apply for and receive aid"--from the dependent children in their care. It would be illogical, therefore, to interpret the identical words, when used in § 602(a)(25), in a fashion different from that employed in its sister statute § 602(a)(26). Moreover, it is a cardinal rule of statutory construction that words and phrases found in different sections of related statutory material should be interpreted to avoid inconsistencies,

particularly when a reasonable interpretation can be adopted which will not do violence to the plain words of the act, and will carry out the intentions of Congress. United States v. Raynor, 302 U.S. 540, 547 (1938). This rule is based upon the practical experience that "a legislative body generally uses a particular word with a consistent meaning in a given context," Erlenbaugh v. United States, 409 U.S. 239, 244 (1972). The rule would appear to have particular applicability where identical phrases are used in two closely related passages passed by the same legislature at the same time.

It should be noted that it would not "do violence to the plain words of the act" or frustrate Congressional intent, to interpret § 602(a)(25) in a manner consistent with § 602(a)(26). Ordinarily, the person who "applies for or receives aid" on behalf of an indigent, AFDC-eligible family will be the caretaker relative, and it is he, not the child, who may later be the "missing parent" who is pursued in accordance with the Child Support Program. Also, for purposes of numerically identifying an AFDC family group-- in order to simplify the administration of the AFDC program-- it would appear sufficient to have one SSN for the entire group. Thus, we conclude that the terms "recipient" and "applicant" as used in 42 U.S.C. § 602(a)(25) may not be interpreted to include children receiving benefits from the AFDC programs.

Our conclusion finds further support in two additional factors. First, in dealing with a similar situation where benefits may be received on behalf of

children under the Social Security Act, Congress acted very deliberately with regard to the assignment of SSN's to such children. In 42 U.S.C. § 405(c)(2)(B)(i)(II) Congress directed the Secretary to take affirmative measures to assure that SSN's were assigned "to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf [Social Security] benefits are claimed by another person." Here Congress did not deliberately provide that benefitted children must obtain and provide SSN's, although it clearly has recognized the need to expressly deal with a similar situation in the context of the Social Security Act.

Secondly, Congress itself, by the enactment of § 7 of the Privacy Act of 1974, indicated that the disclosure of an SSN is not a trivial precondition to any benefit provided by law. Rather, § 7 makes it unlawful for any governmental agency to deny anyone such benefits on account of the failure to disclose his SSN unless the disclosure is required by federal law. We mention § 7 in this context merely to demonstrate Congress' intention of avoiding unwarranted disclosure of SSN's. Such an intent buttresses our conclusion that if Congress wished to require SSN's from children benefitted by AFDC programs it would have done so explicitly. This inference is particularly strong in light of the fact that the same session of the same Congress enacted both the Social Services Amendments of 1974 and the Privacy Act of 1974.

The plaintiffs also argue that the regulations here in issue specifically violate § 7 of the Privacy Act. The plaintiffs' argument may be valid, however, a finding on this issue is not necessary to the Court's decision and we do not so rule.

As noted earlier, one purpose of the requirements of 42 U.S.C. § 602(a)(25) was "to simplify the administration of the AFDC and Child Support Programs." The Court is not unsympathetic to the Government's arguments that the administrative efficiency of the AFDC and other federal programs will be adversely affected by today's decision. We agree, but nonetheless the Government has directed its arguments to the wrong forum. Only Congress has the ability to impose or to authorize the imposition of the requirements of § 602(a)(25) upon the plaintiffs' children. In the Court's opinion, Congress has not yet done so.

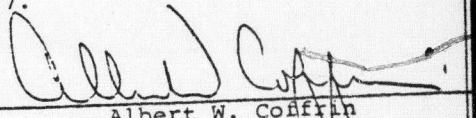
Finally, in view of the Court's decision on the statutory issue in this matter, we do not reach the question of whether plaintiffs' constitutional claims are "insubstantial," under the standard articulated in Hagans v. Lavine, 415 U.S. 528, 537-39 (1974). It would be inappropriate for us to do so now. See Youakim v. Miller, 44 U.S.L.W. 4467, 4468 (U.S. March 31, 1976).

Accordingly, the individual plaintiffs' motion for summary judgment is hereby granted and, correspondingly, the federal defendant's motion to dismiss or, alternatively, for summary judgment is denied. Further, the parties to this litigation are hereby directed to submit to this Court, within thirty days of the date hereof, a judgment order upon which

they agree and which is in accordance with this opinion. Should the parties be unable to agree as to the damages to which the plaintiffs Walter and Maria Green are entitled, the Court will schedule a hearing thereon upon request of counsel for the parties made within thirty days from the date hereof.

It is so ORDERED.

Dated at Burlington in the District of Vermont,
this 24th day of February, 1977.


Albert W. Coffin
District Judge

FOOTNOTES

1/ There is no need in this opinion to distinguish the Aid to Needy Families with Children-Unemployed Fathers sub-program from the basic ANFC program.

2/ The action was commenced prior to the repeal of 28 U.S.C. §§ 2281, 2282, and the amendment of 28 U.S.C. § 2284. Pub. L. No. 94-381 (Aug. 12, 1976). For that reason the constitutional claim urged by the plaintiffs would still require a hearing before a three-judge court.

3/ The regulations could also be invalidated if they were not "reasonably related to the purposes of the enabling legislation." Thorpe v. Housing Authority, 393 U.S. 268, 280-81 (1969); Serritella v. Engelman, 462 F.2d 601, 602 (3d Cir. 1972). Plaintiffs do not, however, claim the regulations to be invalid on that ground.

COPY

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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Walter and Maria Green,
on behalf of themselves
and their minor children;
on behalf of themselves and
others similarly situated,
Plaintiffs

and

Pat Walker,

Plaintiff
Intervenor

v.

Paul R. Philbrook,
Commissioner of the Vermont
Department of Social Welfare
and David Mathews, Secretary
of the Department of Health,
Education and Welfare,
Defendants

Civil Action

File No. 75-232

JUDGMENT ORDER

Counsel having failed to agree on a judgment order as directed by the Court in its order filed on February 24, 1977, the Court, after consultation with counsel this date, issues the following Judgment Order in this cause:

1. Section 2303 of the Vermont Welfare Assistance Manual is declared to be invalid in its requirement that ANFC-benefitted Vermont children furnish or apply for Social Security Account numbers as said requirement is in conflict with 42 U.S.C. § 602(a)(25).

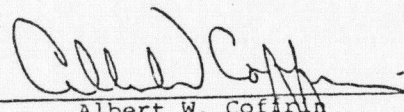
2. Defendants Mathews and Philbrook are enjoined from requiring SSN's from ANFC-benefitted Vermont children as a condition of eligibility for benefits.

3. 45 C.F.R. § 232.10 is declared to be invalid in its requirement that ANFC-benefitted/^{Vermont}children furnish or apply for SSN's as said requirement is in conflict with 42 U.S.C.~§ 602(a)(25).

4. As damages, the Vermont Department of Social Welfare shall pay to plaintiffs Greens a sum equal to the total monthly benefits denied to them due to the termination of their ANFC benefits pursuant to the invalid regulations.

5. SSN's which were divulged on behalf of plaintiff Patricia Walker's children pursuant to the invalid regulations shall be expunged from any and all records, computer tapes or other documents written, taped or otherwise recorded at the Vermont Department of Social Welfare and/or the Department of Health, Education and Welfare as if such numbers had never been revealed, provided however, that if said SSN's would exist in any event and for any reason other than procuring or divulging them pursuant to the invalid regulations, no deletion or expungement is required under this order.

Dated at Burlington in the District of Vermont,
this 21st day of April, 1977.


Albert W. Coffin
District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

WALTER AND MARIA GREEN,
on behalf of themselves and
their minor children; on behalf
of themselves and other similarly
situated, and

PAT WALKER, Plaintiff-Intervenor

v.

Civil No. 75-232

PAUL R. PHILBROOK, Commissioner
of the Vermont Department of
Social Welfare and DAVID MATHEWS
Secretary of the Department of
Health, Education and Welfare

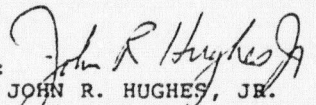
NOTICE OF APPEAL

Notice is hereby given that DAVID MATHEWS, Secretary of Health, Education and Welfare, defendant in the above-captioned action, appeals to the United States Court of Appeals for the Second Circuit from the Opinion and Order entered in this action on the 24th day of February, 1977, and Judgment Order entered in this action on the 21st day of April, 1977.

DATED at Rutland, in the District of Vermont,
this 14th day of June, 1977.

UNITED STATES OF AMERICA

GEORGE W.F. COOK
United States Attorney

By: 
JOHN R. HUGHES, JR.
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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WALTER AND MARIA GREEN,
ON BEHALF OF THEMSELVES
AND THEIR MINOR CHILDREN:
ON BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED,
PLAINTIFFS

AND

CIVIL ACTION

PAT WALKER,
PLAINTIFF
INTERVENOR

FILE NO. 75-232

V.

PAUL R. PHILBROOK,
COMMISSIONER OF THE VERMONT
DEPARTMENT OF SOCIAL WELFARE
AND DAVID MATHEWS, SECRETARY
OF THE DEPARTMENT OF HEALTH,
EDUCATION AND WELFARE,
DEFENDANTS

NOTICE OF APPEAL

NOTICE is hereby given that Defendant in the above
action, PAUL R. PHILBROOK, hereby appeals to the United States
Court of Appeals for the Second Circuit from the order entered
in this action on the 21st day of April, 1977.

Dated this 13th day of June, 1977

M. JEROME DIAMOND
Attorney General

by

Georgiana O. Miranda
GEORGIANA O. MIRANDA
Assistant Attorney General
State Office Building
Montpelier, Vt. 05602

Office of the
ATTORNEY
GENERAL
Montpelier,
Vt. 05602

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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WALTER AND MARIA GREEN,
On behalf of themselves
and their minor children,
On behalf of themselves and
others similarly situated,

Plaintiffs

Civil Action

File No. 75-232

PAT WALKER,

Plaintiff
Intervenor

PAUL R. PHILBROOK,
Commissioner of the Vermont
Department of Social Welfare
and DAVID MATHEWS, Secretary
of the Department of Health,
Education and Welfare,
Defendants

NOTICE OF APPEAL

Notice is hereby given that plaintiffs, Walter and
Maria Green, and Pat Walker, hereby appeal to the U. S. Court
of Appeals for the Second Circuit the oral order entered on
April 21, 1977 denying plaintiffs' Motion for Class Certification.

Dated: 6/1/77

Zander B. Rubin
Zander B. Rubin, Esq.
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs